

GUARDIANSHIPS; AUTHORIZING A FEE

CHAPTER 313

S.B. No. 1096

AN ACT

relating to guardianships; authorizing a fee.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 14, Code of Criminal Procedure, is amended by adding Article 14.055 to read as follows:

Art. 14.055. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a) In this article, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a peace officer detains or arrests a person who is a ward, the peace officer or the person having custody of the ward shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or arrest.

SECTION 2. Chapter 15, Code of Criminal Procedure, is amended by adding Article 15.171 to read as follows:

Art. 15.171. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a) In this article, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a peace officer arrests a person who is a ward, the peace officer or the person having custody of the ward shall notify the court having jurisdiction over the ward's guardianship of the ward's arrest.

SECTION 3. Subchapter A, Chapter 1104, Estates Code, is amended by adding Section 1104.003 to read as follows:

Sec. 1104.003. TRAINING REQUIRED. A court may not appoint an individual to serve as guardian under this title if the individual has not received the training required under Section 155.204, Government Code, unless waived by the court in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

SECTION 4. The heading to Section 1104.404, Estates Code, is amended to read as follows:

Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING CERTAIN PERSONS [HOLDING A CERTIFICATE].

SECTION 5. Section 1104.404(a), Estates Code, is amended to read as follows:

*(a) The clerk described by Section 1104.402 is not required to obtain criminal history record information for a person ~~[who holds a certificate issued under Section 155.102, Government Code, or a provisional certificate issued under Section 155.103, Government Code,]~~ if the ~~[guardianship certification program of the]~~ Judicial Branch Certification Commission conducted a criminal history check on the person *under Chapter 155, Government Code* ~~[before issuing or renewing the certificate].~~*

SECTION 6. Subchapter B, Chapter 1253, Estates Code, is amended by adding Section 1253.0515 to read as follows:

Sec. 1253.0515. CERTIFICATION OR TRAINING OF GUARDIAN. (a) A guardian filing an application under this subchapter must comply with Subchapter C or D, Chapter 155, Government Code, as applicable.

(b) A court may not grant an application filed under this subchapter unless the guardian complies with Subsection (a).

SECTION 7. Chapter 52, Family Code, is amended by adding Section 52.011 to read as follows:

Sec. 52.011. DUTY OF LAW ENFORCEMENT OFFICER TO NOTIFY PROBATE COURT. (a) In this section, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a law enforcement officer takes a child who is a ward into custody under Section 52.01(a)(2) or (3), the law enforcement officer or other person having custody of the child shall notify the court with jurisdiction over the child's guardianship of the child's detention or arrest.

SECTION 8. The heading to Chapter 155, Government Code, is amended to read as follows:

CHAPTER 155. DUTIES RESPECTING GUARDIANSHIP [CERTIFICATION]

SECTION 9. Section 155.001, Government Code, is amended by adding Subdivision (6-a) to read as follows:

(6-a) Notwithstanding Section 151.001, "registration" means registration of a guardianship under this chapter.

SECTION 10. The heading to Subchapter C, Chapter 155, Government Code, is amended to read as follows:

SUBCHAPTER C. STANDARDS FOR AND CERTIFICATION [REGULATION] OF CERTAIN GUARDIANS

SECTION 11. Chapter 155, Government Code, is amended by adding Subchapters D and E to read as follows:

SUBCHAPTER D. GUARDIANSHIP REGISTRATION AND DATABASE

Sec. 155.151. REGISTRATION OF GUARDIANSHIPS. (a) The supreme court, after consulting with the office and the commission, shall by rule establish a mandatory registration program for guardianships under which all guardianships in this state shall be required to register with the commission.

(b) In establishing rules under this section, the supreme court shall ensure courts with jurisdiction over a guardianship immediately notify the commission of the removal of a guardian.

Sec. 155.152. GUARDIANSHIP DATABASE. In cooperation with the commission and courts with jurisdiction over guardianship proceedings and by using the information obtained by the commission under this subchapter, the office shall establish and maintain a central database of all guardianships subject to the jurisdiction of this state.

Sec. 155.153. ACCESS TO DATABASE. (a) The office shall ensure the database is accessible to the Department of Public Safety for law enforcement purposes.

(b) Subject to Subsection (c), the Department of Public Safety shall make information from the database available to law enforcement personnel through the Texas Law Enforcement Telecommunications System or a successor system of telecommunication used by law enforcement agencies and operated by the department.

(c) The only information that may be disclosed from the database to a law enforcement official inquiring into a guardianship is:

- (1) the name, sex, and date of birth of a ward;
- (2) the name, telephone number, and address of the guardian of a ward; and
- (3) the name of the court with jurisdiction over the guardianship.

(d) The office shall limit access to the database to properly trained staff.

Sec. 155.154. DATABASE DISCLAIMER. To the extent feasible, the following disclaimer shall be displayed when the database is accessed: "This database is for the limited purpose of determining whether an individual has a guardian and obtaining a guardian's contact information. The scope of a guardian's authority is determined by court order, and a guardian should not be presumed to have the authority to act for or on behalf of a ward until the extent of the guardian's authority is verified by the court with jurisdiction over the guardianship."

Sec. 155.155. CONFIDENTIALITY OF INFORMATION IN DATABASE. (a) Information that is contained in the database required under Section 155.152, including

personally identifying information of a guardian or a ward, is confidential and not subject to disclosure under Chapter 552 or any other law.

(b) A law enforcement agency or officer that receives the information must maintain the confidentiality of the information, may not disclose the information under Chapter 552 or any other law, and may not use the information for a purpose that does not directly relate to the purpose for which it was obtained.

SUBCHAPTER E. DUTY TO ASSIST IN QUALIFYING CERTAIN GUARDIANS

Sec. 155.201. DEFINITION. In this subchapter, "probate court" has the meaning assigned by Section 1002.008, Estates Code.

Sec. 155.202. APPLICABILITY. This subchapter does not apply with respect to the following persons who are or will be providing guardianship services to a proposed ward:

- (1) an attorney or corporate fiduciary; or
- (2) an individual subject to certification under Subchapter C.

Sec. 155.203. DUTY TO PROVIDE ASSISTANCE IN QUALIFYING GUARDIANS; SUPREME COURT RULEMAKING. (a) The supreme court, after consulting with the commission, shall by rule establish a process by which the commission performs training and criminal history background checks for individuals seeking appointment as guardian.

(b) In adopting rules under this section, the supreme court shall ensure that the commission is required to provide confirmation of a person's completion of training and a copy of the person's criminal history background check to the probate court not later than the 10th day before the date of the hearing to appoint a guardian.

Sec. 155.204. TRAINING REQUIRED. (a) In adopting rules under Section 155.203, the supreme court shall:

(1) subject to Subdivision (2), ensure that before a person is appointed guardian, the person completes a training course:

(A) designed by the commission to educate proposed guardians about their responsibilities as guardians, alternatives to guardianships, supports and services available to the proposed ward, and a ward's bill of rights under Section 1151.351, Estates Code; and

(B) made available for free to proposed guardians by the commission online via the commission's Internet website and, on request, in a written format; and

(2) identify the circumstances under which a court may waive the training required under this section.

(b) Notwithstanding Section 155.203(b) or Section 1251.052, Estates Code, the training required under Subsection (a):

(1) does not apply to the initial appointment of a temporary guardian under Chapter 1251, Estates Code; and

(2) applies only if there is a motion to extend the term of a temporary guardian.

(c) The commission may make the training required under this section available to court investigators and guardians ad litem. A court investigator or guardian ad litem is not required to receive training unless required to do so by a court.

Sec. 155.205. DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) In accordance with the rules adopted by the supreme court under Section 155.203, the commission shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to an individual seeking appointment as a guardian or temporary guardian.

(b) The commission shall obtain:

(1) fingerprint-based criminal history record information of an applicant if the liquid assets of the estate of a ward exceed \$50,000; or

(2) name-based criminal history record information of an applicant if the liquid as-

sets of the estate of a ward are \$50,000 or less.

Sec. 155.206. INFORMATION FOR EXCLUSIVE USE OF COMMISSION AND COURT. (a) Criminal history record information obtained under this subchapter is privileged and confidential and is for the exclusive use of the commission and the court with jurisdiction over the guardianship. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the individual being investigated.

(b) The commission may destroy the criminal history record information after the information is used for the purposes authorized by this subchapter.

Sec. 155.207. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) The commission shall use the criminal history record information obtained under this subchapter only for a purpose authorized by this subchapter or to maintain the registration of a guardianship under Subchapter D.

(b) A court may use the criminal history record information obtained under this subchapter only in the same manner and only to the same extent a court is authorized to use the information under Section 1104.409, Estates Code.

Sec. 155.208. CLARIFICATION OF AUTHORITY GRANTED. (a) This subchapter does not grant to the commission the authority to:

(1) establish additional qualifications or a code of ethics for individuals subject to training or a background check under this subchapter; require those individuals to pass examinations or take continuing education courses, or otherwise regulate those individuals; or

(2) interfere with a court's authority to ensure a guardian is performing all of the duties required of the guardian respecting a ward.

(b) Individuals subject to training or a background check under this subchapter are not subject to enforcement action under Chapter 153.

Sec. 155.209. FEE FOR OBTAINING CRIMINAL HISTORY RECORD INFORMATION. (a) Except as provided by Subsection (b), the commission may charge a fee to obtain criminal history record information under this subchapter, in an amount approved by the supreme court.

(b) The supreme court may adopt rules excluding individuals who are indigent from having to pay the fee authorized by this section.

(c) A guardian is entitled to reimbursement from the guardianship estate as provided by Subchapter C, Chapter 1155, Estates Code, for the fee authorized by this section.

SECTION 12. Section 411.1386(a–6), Government Code, is amended to read as follows:

(a–6) The clerk described by Subsection (a) is not required to obtain criminal history record information for a person ~~[who holds a certificate issued under Section 155.102 or a provisional certificate issued under Section 155.103]~~ if the ~~[guardianship certification program of the]~~ Judicial Branch Certification Commission conducted a criminal history check on the person under Chapter 155 ~~[before issuing or renewing the certificate]~~. The commission shall provide to the clerk at the court's request the criminal history record information that was obtained from the department or the Federal Bureau of Investigation.

SECTION 13. Subchapter A, Chapter 573, Health and Safety Code, is amended by adding Section 573.0021 to read as follows:

Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE COURTS. As soon as practicable, but not later than the first working day after the date a peace officer takes a person who is a ward into custody, the peace officer shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or transportation to a facility in accordance with Section 573.001.

SECTION 14. (a) Not later than June 1, 2018, the Office of Court Administration of the Texas Judicial System shall establish the guardianship database required under

Section 155.152, Government Code, as added by this Act, and provide access to the database to the Department of Public Safety in accordance with Section 155.153, Government Code, as added by this Act.

(b) A law enforcement officer or other person with custody of a ward is not required to comply with Articles 14.055 and 15.171, Code of Criminal Procedure, Section 52.011, Family Code, or Section 573.0021, Health and Safety Code, as added by this Act, as applicable, until July 1, 2018.

SECTION 15. (a) As soon as practicable after the effective date of this Act, the Supreme Court of Texas, after consulting with the Judicial Branch Certification Commission, shall adopt rules necessary to implement Subchapter E, Chapter 155, Government Code, as added by this Act.

(b) A proposed guardian is not required to comply with Section 155.204, Government Code, as added by this Act, until June 1, 2018.

SECTION 16. This Act takes effect September 1, 2017.

Passed the Senate on April 3, 2017: Yeas 30, Nays 1; passed the House on May 19, 2017: Yeas 125, Nays 16, one present not voting.

Approved May 29, 2017.

Effective September 1, 2017.

ACCESS TO CRIMINAL HISTORY RECORD INFORMATION BY AN EMERGENCY COMMUNICATION DISTRICT

CHAPTER 314

S.B. No. 1290

AN ACT

relating to access to criminal history record information by an emergency communication district.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1297 to read as follows:

Sec. 411.1297. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: EMPLOYMENT BY EMERGENCY COMMUNICATION DISTRICT. (a) An emergency communication district created under Chapter 772, Health and Safety Code, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

- (1) an applicant for employment by or an employee of the district;*
- (2) an applicant for a volunteer position or a volunteer with the district; or*
- (3) an applicant for employment by or an employee of a person that contracts with the district.*

(b) Criminal history record information obtained by an emergency communication district under Subsection (a) may not be released or disclosed to any person except:

- (1) in a criminal proceeding;*
- (2) on court order; or*
- (3) with the consent of the person who is the subject of the criminal history record information.*

SECTION 2. This Act takes effect September 1, 2017.

Passed the Senate on April 25, 2017: Yeas 31, Nays 0; passed the House on May 19, 2017: Yeas 144, Nays 0, two present not voting.

Approved May 29, 2017.